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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,268	09/29/2003	Michael Fantuzzi	33503/US	3101

7590 04/10/2008  
Scott D. Rothenberger  
DORSEY & WHITNEY LLP  
Intellectual Property Department  
50 South Sixth Street, Suite 1500  
Minneapolis, MN 55402-1498

EXAMINER
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KOSSON, ROSANNE

ART UNIT	PAPER NUMBER
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1652

MAIL DATE	DELIVERY MODE
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04/10/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/674,268	<b>Applicant(s)</b> FANTUZZI, MICHAEL	
	<b>Examiner</b> Rosanne Kosson	<b>Art Unit</b> 1652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 14, 15, 18-20, 22, 23, 32-34, 36-43 and 45-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14, 15, 18-20, 22, 23, 32-34, 36-43 and 45-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/21/07</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 30, 2007 has been entered.

No claims have been amended, canceled or added. A Declaration under 37 CFR § 1.131, signed by the Inventor, has been filed. Accordingly, claims 14, 15, 18-20, 22, 23, 32-34, 36-43 and 45-51 are examined on the merits herewith.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 103***

Claims 14, 15, 18-20, 22, 23, 32-34, 36-43 and 45-51 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Erwin (US 2005/0025756) in view of Soft Gel Technologies, Inc. (EP 888774) and Davidson et al. (US 2004/0001874). This rejection has been discussed in the previous Office actions.

As noted above, Applicant has filed a Declaration under 37 CFR § 1.131 to antedate the Erwin reference. Applicant asserts that the reduction to practice of preparing a limonene solution of co Q10 (coenzyme Q10) and the preparation of a soft gel containing this solution are the same.

In reply, Applicant's Declaration is not effective for antedating Erwin. Erwin, which discloses the preparation of a solution of co Q10 in d-limonene, has an effective U.S. filing date

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of June 25, 2003, based on provisional Application No. 60/482,781. Applicant has an effective U.S. filing date of September 29, 2003. In his Declaration, Applicant states that, on March 13, 2003, he was given the assignment of identifying a new solvent for co Q10 and of developing a more effective method for encapsulating co Q10 in a soft gel. But, being given an assignment to do a particular task is not at all the same thing as successfully completing that task.

Applicant's Declaration does not disclose a date by which the claimed invention was reduced to practice. Thus, the date of Applicant's reduction to practice is September 29, 2003. Moreover, as previously discussed, Applicant has argued throughout the prosecution history, in response to an obviousness rejection, that the claimed invention is not an obvious variation of Erwin, because Erwin does not teach encapsulating his co Q10 solution in a soft gel capsule, and Soft Gel does not teach that rice bran oil or vitamin E dissolves co Q10. Thus Applicant's assertion that preparing a limonene solution of co Q10 (coenzyme Q10) and preparing a soft gel containing this solution are the same thing is inconsistent with his previous statements on the record. Applicant has asserted that Erwin teaches away from the instant invention, because Erwin does not provide motivation to select components for a soft gel that contains dissolved co Q10 and that does not require resolubilization. Thus, throughout the prosecution history, Applicants have argued that their invention is not obvious, but Applicants now appear to argue, by equating their invention with that of Erwin, that their invention is not anticipated. See Applicant's responses of July 12, 2007, pp. 7, 8 (paragraph 4 on p. 8 equates carrier with solvent), 10, 11 and 13; August 31, 2006, pp. 7, 9, 10 and 12; April 28, 2006, pp. 7, 9 and 10; and December 20, 2005, pp. 7-10.

Moreover, this Declaration contains no new information. In his Declarations of October 8 and 16, 2007, Applicant presented notebook pages in which he noted his assignment to find a solvent for co Q10 in which co Q10 was more soluble than in soybean oil (p. 144 of March 14,

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2003). Applicant also presented e-mails beginning on March 14, 2003 that discuss this same assignment. The Declaration of February 12, 2008 simply contains the sentence that Applicant has equated this assignment with a reduction to practice of the claimed invention.

In view of the foregoing, the rejection of record is maintained.

No claim is allowed.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rosanne Kosson whose telephone number is (571)272-2923. The examiner can normally be reached on Monday-Friday, 8:30-6:00, alternate Mondays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nashaat Nashed can be reached on 571-272-0934. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Rosanne Kosson  
Examiner, Art Unit 1652  
rk/2008-03-25

/Rebecca E. Prouty/  
Primary Examiner,  
Art Unit 1652